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Proposed programme budget for the biennium 2008-2009

Revised estimates relating to the proposed programme budget for the biennium 2008-2009 under sections 17, 20, 21, 27, 28C, 28D, 28E, 28F and 28G to ensure operational preparedness and business continuity in a protracted human influenza pandemic crisis

Report of the Secretary-General**

Summary

The emergence of a virulent strain of avian influenza known as A(H5N1) has put the world on alert for a new human influenza pandemic. On 25 September 2005, the United Nations responded with a coordinated effort to meet the needs of Member States by establishing a United Nations System Influenza Coordinator, who was tasked with developing and implementing a comprehensive unified strategy for the United Nations system globally on pandemic influenza prevention, preparedness and response, and with improving efforts to control avian influenza. A pandemic would constitute a different type of crisis than those covered by crisis management plans in place within the United Nations system given its slow onset, long duration and potential for affecting a significant number of staff and their families. Thus, the United Nations system gave renewed attention to its own organizational capacity to sustain operations and protect staff in the event of a major and protracted pandemic influenza crisis by ensuring that viable business continuity and staff protection plans are in place.

* A/62/150.

** The present report is submitted at the present time due to the need for extensive consultations with offices.

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At United Nations headquarters locations and the regional commissions, avian and human influenza coordinators or focal points were appointed to ensure that all duty stations completed pandemic crisis preparedness plans. The preparedness activities identified were validated through an external review and can be grouped into three broad categories: (a) activities to maintain the continuity of critical United Nations functions and operations; (b) medical intervention and prevention; and (c) preparatory activities (capacity-building and training). Additional resources estimated at $7,868,600 for the biennium 2008-2009 are requested for the above-mentioned activities. In the event of a pandemic, further resources, currently estimated at $9,976,200, while not being requested at this time, are also presented in the report.

I. Background

1. The emergence of a virulent strain of avian influenza known as A(H5N1) has put the world on alert for a new human influenza pandemic. The history of influenza pandemic cycles suggests that a human influenza pandemic is overdue. The emergence of the A(H5N1) virus — a new strain causing highly pathogenic avian influenza in an increasing number of countries — has the potential to cause such a pandemic. On 25 September 2005, the United Nations responded with a coordinated effort to meet the needs of Member States by establishing a United Nations System Influenza Coordinator, who was tasked with developing and implementing a comprehensive unified strategy for the United Nations system globally on pandemic influenza prevention, preparedness and response and with improving efforts, at both the international and national levels, to control avian influenza.

2. On 28 September 2005, the Deputy Secretary-General convened the first meeting of the inter-agency steering committee on avian and human influenza. The committee meets approximately every two months and provides guidance for a coordinated United Nations response globally, including guidance on contingency planning to ensure the health and safety of United Nations personnel, a critical element for business continuity.

3. The United Nations system has also given renewed attention to its own organizational capacity to sustain operations and protect its personnel in the event of a major and protracted avian influenza pandemic by ensuring that agencies have in place viable business continuity and personnel protection plans. In this context, the Secretary-General, on 15 March 2006, issued a directive applicable to the entire United Nations system requesting all offices and agencies to appoint an avian and human influenza coordinator at all duty stations. The coordinators were to work with management teams and existing crisis management and preparedness mechanisms to ensure that pandemic plans were prepared and that preparedness was monitored. The Pandemic Planning and Preparedness Guidelines for the United Nations System (15 March 2006) and the accompanying United Nations Medical Services Staff Contingency Plan Guidelines for an Influenza Pandemic (1 March 2006) provide guidance on the types of activities each office should undertake and on the amounts of supplies and equipment that should be procured in order to prepare for a pandemic.

4. A pandemic would be a crisis with a slow onset and long (approximately 18-month) duration. It is estimated that approximately 30 per cent of United Nations personnel and their families would fall ill at some point during a pandemic. Absenteeism among United Nations personnel — whether for illness, fear of infection or to care for sick family members or for children — could reach 40 per cent. The preparedness and contingency planning for a pandemic must also take into account the fact that most other service providers — whether public or private — would face similar circumstances. As a result, significant delays and/or interruptions in public services and private businesses might be expected. Host Government public safety and emergency management institutions would likely also be attenuated, because of both increased demand for services and a decreased number of personnel available for duty. In this environment, an institution's arrangements for business continuity gain heightened importance compared with other types of crisis.

5. At the meeting of the steering committee on 1 May 2006, the appointment of a pandemic influenza preparedness coordinator for the United Nations Office at Geneva was recognized, and it was decided to appoint coordinators also for Headquarters and the United Nations Offices at Vienna and Nairobi to undertake similar activities. Accordingly, the Secretary-General created the Office of the New York Pandemic Influenza Preparedness Coordinator shortly thereafter. The Office has been tasked with ensuring the preparedness of the Secretariat and the funds, programmes and liaison offices in New York for a possible pandemic. In Vienna, a pandemic coordinator has not yet been appointed, but pandemic planning and preparedness are being undertaken through the existing inter-agency crisis management mechanisms. In Nairobi, an avian and pandemic influenza focal point and secretariat have been established within the Division of Administrative Services.

6. At the meeting of the Pandemic Senior Emergency Policy Team held on 7 September 2006, chaired by the Deputy Secretary-General, it was decided that the Under-Secretary-General for Management would, in cooperation with the United Nations System Influenza Coordinator and the Office of the New York Pandemic Influenza Preparedness Coordinator, ensure that all headquarters locations and regional commissions completed preparedness plans and accompanying budgets in the near future. Two overall goals for pandemic contingency planning for the United Nations headquarters locations and regional commissions were identified: (a) protecting the health, safety and security of personnel and physical assets; and (b) ensuring the continuation of critical functions and operations.

7. The Department of Peacekeeping Operations established an influenza pandemic preparedness team in October 2006, which is responsible for assisting peacekeeping operations in formulating and testing pandemic preparedness plans. The United Nations System Influenza Coordinator, with the support of the Office for the Coordination of Humanitarian Affairs and the United Nations Development Programme, established in December 2006 a pandemic influenza contingency support team, which works to ensure that the United Nations system at the country level is able to respond adequately to the non-health-related aspects of a pandemic. In addition, in 2007, the support team and the Office for the Coordination of Humanitarian Affairs began discussing the need for a framework for humanitarian relief providers to be ready to respond during a pandemic.

8. On 11 April 2007, at a meeting of the Pandemic Senior Emergency Policy Team, it was decided that the pandemic plans of all United Nations headquarters locations and regional commissions would be validated externally to ensure that the plans and their accompanying budgets were in line with global best practices for pandemic planning. The external validation exercise began in June 2007 and was completed on 10 July. The recommendations of the external validation have been incorporated into the pandemic plans of all headquarters locations and regional commissions.

9. The proposals in the present report are directly aligned with the Secretariat strategy for crisis management and continuity of operations and are structured to complement the comprehensive report on information and communications technology disaster recovery and continuity of operations for the Secretariat to be submitted to the General Assembly at its sixty-second session. The strategy of the disaster recovery proposal is to establish the requisite technical and operational

capability for sustaining critical information and communications technology systems and applications in the event of a crisis.

10. The present document sets out the specialized requirements for pandemic crisis preparedness, taking into account previous and proposed investments in continuity of operations. Pandemic preparedness measures require specialized business continuity capabilities for telecommuting and remote operations for identified critical personnel. The present report is designed to address these particular requirements; therefore the proposals supplement and build on the foundation proposed in the comprehensive report on disaster recovery and business continuity.

11. The recommendations of the working groups highlighted the need for a number of preparedness activities, which may be grouped into three broad categories: (a) activities needed to maintain the continuity of critical United Nations functions and operations; (b) medical intervention and prevention; and (c) preparatory activities (capacity-building and training). Certain activities are needed at the current planning stage, while others would be required only in the event of a pandemic.

12. For the purposes of the present document, pandemic planning is divided into two parts: resources requested for the biennium 2008-2009 and additional resources required in the event of a pandemic. Because of the uncertainty of when a pandemic could arise, it is prudent to undertake certain activities — among them the procurement of critical equipment and supplies — as soon as possible. This strategy will hasten the achievement of a state of full preparedness for a pandemic and will mitigate the risk that certain items will be in short supply as a pandemic approaches. Keeping stocks of emergency supplies up to date and carrying out regular activities such as training, simulations and maintenance of emergency systems will become part of the regular workplan of the United Nations during the biennium 2008-2009. Certain additional activities would have to be undertaken only in the event of a pandemic, either because they would be required only at that time (such as procurement of certain hardware) or because more exact information on the nature of the pandemic would be required before such activities could be carried out (such as the procurement of a possible pandemic vaccine). Accordingly, the estimated resources for the additional activities that would need to be undertaken in the event of a pandemic are described in the present report but are not requested at this time.

13. It should be noted that resource requirements totalling $5,969,900 to fund the necessary pandemic crisis preparedness activities of the Secretariat in 2007, under sections 17, 18, 20, 21, 27, 28A, 28C, 28D, 28E, 28F and 28G of the programme budget for 2006-2007, are being met through funding arrangements under the discretionary authority granted to the Secretary-General in General Assembly resolution 60/283 and will be reported in the context of the second performance report for the programme budget for the biennium 2006-2007. Those resources cover non-post requirements for initial preparedness.

II. Pandemic preparedness at the United Nations in New York

14. While the Secretariat and the funds and programmes in New York each have crisis management plans, those plans set out responses to sudden-onset crises that are of brief duration and that do not directly affect a significant numbers of United Nations personnel.

15. The following critical functions of the United Nations in New York under pandemic conditions were identified: the ability of the principal organs (i.e., the Security Council and the General Assembly) to conduct critical meetings and communicate with other organizations and Governments; the ability of the Secretary-General to represent the Organization, to respond to the needs of the international community, to provide the means for diplomatic discourse and negotiation and to play a global leadership role; the protection of personnel (through, inter alia, medical services and counselling) and physical assets; the ability to make important operational and policy decisions related to the pandemic; the ability to make important operational and policy decisions for critical global and field operations and mandates, including peacekeeping and humanitarian operations; the ability to communicate with other organizations and Governments; the maintenance of utilities, telecommunications and information technology services; and the continuation of critical administrative functions.

16. At the meeting of the Pandemic Senior Emergency Policy Team, held on 7 September 2006, four broad scenarios for pandemic contingency planning were approved for the United Nations system in New York. Those scenarios link to the World Health Organization's phases of a pandemic, which are global in nature, and are applied to the specific local context. The four scenarios are:

- *Scenario A (low impact).* Public life and business in New York City are hardly affected by the pandemic, but there is the risk of rapid transition to a higher-impact scenario. The United Nations would function as usual, but would prepare for transition to another scenario.
- *Scenario B (medium impact).* Public life and business in New York City are somewhat affected by the pandemic, with rising rates of absenteeism and possible temporary disruptions in public services. Schools and day-care centres may close. The United Nations would continue to function, although some non-critical functions would be scaled back. For health and safety reasons, public access to the United Nations complex would be suspended.
- *Scenario C (high impact).* Public life and business in New York City are significantly affected by the pandemic, with significant absenteeism resulting in disruptions to many types of services. In this emergency situation, the United Nations would be officially closed, with only a small number of staff performing critical functions reporting for work. For health and safety reasons, the access of other than critical personnel to the complex would be suspended.
- *Scenario D (high impact with temporary relocation).* Public life and business in New York City are significantly affected by the pandemic. Because of the failure of building services or the absence of critical personnel, the United Nations would temporarily relocate its critical functions to another location. For health and safety reasons, only security and system maintenance personnel would have access to the United Nations complex.

17. The Office of the New York Pandemic Influenza Preparedness Coordinator initiated a comprehensive stock-taking and planning exercise designed to highlight gaps in the existing crisis management plans and to heighten awareness of the need to ensure business continuity. Nine working groups were established in the areas of operational continuity of the General Assembly and the Security Council; human resources administration and data collection; medical planning and services; budgetary and financial processes and requirements; safety and security of personnel and physical assets; critical vendor management; information technology; communication and training; and public communication. The chairs of the working groups and other pertinent staff formed a lead working group, with the Under-Secretary-General for Management as chair and the New York Pandemic Influenza Preparedness Coordinator as vice-chair. The Pandemic Crisis Operations Group and the Pandemic Senior Emergency Policy Team, the key crisis management committees at Headquarters, have provided guidance on and approval of key policies of the New York pandemic plan.

18. The resources requested herein for the United Nations in New York relate for the most part to the Secretariat only (funds, programmes and liaison offices located in New York will cover costs specifically related to their own personnel). However, certain services, such as security, training and medical treatment, are provided by the Secretariat to all United Nations offices in New York and are thus included in the request.

19. Total requirements for the United Nations in New York for 2008-2009 are estimated at $5,951,600, including the resources required for the Business Continuity Management Unit that has been created in the Office of Central Support Services, Department of Management, which has been tasked with the coordination and monitoring of crisis planning and preparedness activities at all locations. In the event of a pandemic, another $8,232,800 would be required in New York (see table 1).

Table 1
United Nations Headquarters
(Thousands of United States dollars)

	Estimated resource requirements	
	2008-2009	*In the event of a pandemic*
Maintaining business continuity	5 038.7	7 716.7
Operational continuity (onsite and telecommuting)	3 317.0	1 807.6
Public information (including public website)	138.0	130.1
Administration of personnel	—	5 779.0
Business Continuity Management Unit	1 583.7	—
Medical interventions and prevention	382.6	511.1
Medical interventions (including stress counselling)	225.6	458.1
Prevention equipment and activities	157.0	53.0
Preparatory activities	530.3	5.0
Awareness activities (including website)	429.4	5.0
Training	100.9	—
Total	**5 951.6**	**8 232.8**

20. *Business continuity*. Some $5,038,700 would be required for the biennium 2008-2009 for activities needed to maintain business continuity. An estimated additional amount of $7,716,700 would be needed in the event of a pandemic. Business continuity activities include the procurement and adaptation of software to enable the Security Council to meet via teleconference and/or web conference in the event of an emergency. A demonstration of the use of the latter technology was presented to Council members on 2 April 2007. Also included are activities that are required to enable critical United Nations personnel to telecommute and to enable certain critical personnel to continue working in the complex during a crisis. Activities related to keeping the public informed during a pandemic, including statements of the Secretary-General, noon news briefings and pandemic-related material on the United Nations public website are included as well. Additional costs related to the administration of personnel contracts would accrue in the event of a pandemic. Supplies would be procured to enable emergency sheltering of critical personnel on the premises for up to nine days; this provision might be required should local safety conditions make it inadvisable for personnel to leave the complex for a period of time.

21. *Medical interventions and prevention activities*. An amount of $382,600 would be required for the biennium 2008-2009 for activities in this category. An additional $511,100 would be required in the event of a pandemic. These activities are related to protecting the health of United Nations personnel and their dependants during a pandemic by providing appropriate information on prevention and treatment and, if necessary, essential medications and protective equipment. Individuals with an occupational risk of exposure to the pandemic virus would receive specialized protective equipment and training. Initial investments in these activities began in 2006, but many activities — particularly the updating of medical stocks — would require continuing investments in order to maintain a state of preparedness.

22. *Preparatory activities*. Actions needed to provide United Nations personnel with the information required to protect their health and the health of their families during a pandemic would require an estimated $530,300 during the biennium 2008-2009. An additional $5,000 would be required in the event of a pandemic. These awareness activities include lectures and presentations, printed materials, information sessions and a pandemic website for staff. Specialized training would also be provided to United Nations personnel having critical functions during a pandemic.

III. Pandemic preparedness at other United Nations headquarters locations and regional commissions

23. The status of pandemic preparedness at other headquarters locations and regional commissions varies. The differences among duty stations are a consequence of several factors. At some locations, such as the Economic and Social Commission for Asia and the Pacific (ESCAP) much of the preparation has already occurred and thus a relatively smaller amount of additional funding would be required. At other locations, such as the Economic Commission for Latin America and the Caribbean (ECLAC), there is a highly evolved plan, and resources are required to implement the preparedness phases of that plan. At other locations, such as the Economic Commission for Africa (ECA) and the Economic and Social Commission for Western Asia (ESCWA), planning is in the early stages, and it is quite possible that all the needs are not yet fully known. The differences also reflect the varying

availability of needed items (e.g., medical supplies). The activities in 2008-2009 at other United Nations headquarters locations and regional commissions and the corresponding resources required for implementation are described below.

United Nations Office at Geneva

24. The United Nations Office at Geneva has formulated a preparedness plan that focuses on business continuity (see table 2). The host Government would provide most medical interventions and carry out prevention activities, and therefore the United Nations plan contains only small resource provisions in this regard. Preparatory activities are being handled separately by each agency, and therefore do not form part of the United Nations Office at Geneva plan. The Economic Commission for Europe participates in the plan.

25. Activities to maintain business continuity would require $172,200 for the biennium 2008-2009. In the event of a pandemic, an additional $422,200 would be needed. Business continuity activities include upgrading information and communications technology and building maintenance systems to enable telecommuting, providing additional audio and videoconferencing support, which will enable the Security Council, the General Assembly, and other high-level functions to continue (if necessary) and providing for emergency sheltering within the Palais des Nations for up to 100 critical personnel.

Table 2
United Nations Office at Geneva
(Thousands of United States dollars)

	Estimated resource requirements	
	2008-2009	*In the event of a pandemic*
Maintaining business continuity	172.2	422.2
Operational continuity (onsite and telecommuting)	140.4	252.8
Emergency sheltering	31.8	169.4
Medical interventions and prevention	—	—
Preparatory activities	—	—
Total	**172.2**	**422.2**

United Nations Office at Vienna

26. At the United Nations Office at Vienna, the host Government would provide medical interventions and carry out prevention activities for United Nations personnel and their families. The plan of the United Nations Office at Vienna, therefore, is focused on maintaining business continuity (see table 3).

27. Activities to maintain business continuity would require $166,300 for the biennium 2008-2009. In the event of a pandemic, an additional $380,000 would be needed. The primary business continuity need in the plan is to upgrade information technology services in order to enable all 500 personnel to work remotely (only a minimum number of personnel would remain on the premises to ensure the security of the building). This would require an upgrade to the existing remote services hardware and software platform to enable a large number of simultaneous users to

connect and work off site, additional back-up tapes and a larger back-up robot in order to minimize visits to the premises for data security purposes and additional hardware and telecommunications provisions required for certain critical personnel to work off site in the event of a pandemic.

Table 3
United Nations Office at Vienna
(Thousands of United States dollars)

	Estimated resource requirements	
	2008-2009	*In the event of a pandemic*
Maintaining business continuity	166.3	380.0
Operational continuity (onsite and telecommuting)	166.3	380.0
Medical interventions and prevention	—	—
Preparatory activities	—	—
Total	**166.3**	**380.0**

United Nations Office at Nairobi

28. The United Nations Office at Nairobi has formulated a preparedness plan that focuses on maintaining business continuity, protecting the health and welfare of its personnel and their dependants through medical interventions and prevention and preparatory activities such as an awareness campaign and training (see table 4). The Office also participates in the United Nations country team plan for Kenya.

29. Activities to maintain business continuity would require $651,900 for the biennium 2008-2009. Included in this category is the work of the avian and pandemic influenza secretariat, which undertakes and coordinates pandemic planning for the Office.

30. Medical interventions and prevention activities would require $147,000 for the biennium 2008-2009. In the event of a pandemic, $541,400 in additional resources would be required. Activities in this category include keeping up-to-date stocks of antiviral medications, antibiotics and other medical supplies required for prevention and for the treatment of United Nations personnel and their dependants. In addition, individuals with an occupational risk of exposure to the virus would be trained in the use of personal protective equipment to mitigate their risk of exposure. The United Nations Office at Nairobi has identified a need for a small amount of additional support for medical equipment and in-country medical evacuations for emergency medical treatment of its personnel and their dependants during a pandemic.

31. Preparatory activities would require $102,200 for the biennium 2008-2009. These activities include awareness campaigns and information for United Nations Office at Nairobi personnel and their dependants and specialized training for personnel performing critical functions during a pandemic.

Table 4
United Nations Office at Nairobi
(Thousands of United States dollars)

	Estimated resource requirements	
	2008-2009	*In the event of a pandemic*
Maintaining business continuity	651.9	—
Operational continuity (on site and telecommuting)	48.3	—
Administration of personnel	603.6	—
Medical interventions and prevention	147.0	541.4
Medical interventions (including stress counselling)	147.0	541.4
Preparatory activities	102.2	—
Awareness activities (including website)	10.3	—
Training	91.9	—
Total	**901.1**	**541.4**

Economic Commission for Africa

32. The Economic Commission for Africa is participating in the pandemic preparedness plan of the United Nations country team in Ethiopia. The plan includes all three categories: maintaining business continuity, medical interventions and prevention and preparatory activities such as awareness campaigns and training (see table 5).

33. Activities to maintain business continuity would require $531,900 for the biennium 2008-2009. An additional $36,000 would be required in the event of a pandemic. Activities include the establishment of an avian influenza focal point and medical support for preparatory activities, as well as the purchase of supplies to maintain business continuity.

34. Medical interventions and emergency treatment needs would require $5,100 for the biennium 2008-2009. The country team plan for Ethiopia stipulates that each agency should procure antiviral medications and antibiotics for its personnel and their dependants in the event of a pandemic. ECA is requesting funds to keep those stocks up to date. In addition, ECA has identified the need to procure a small amount of additional equipment for emergency medical treatment of its personnel and their dependants during a pandemic. The requested items are available in the local health-care system, but the supply is too limited to service the number of cases expected during a pandemic.

35. Preparatory activities would require $27,000 for the biennium 2008-2009. Those activities include awareness campaigns for ECA personnel and their dependants, as well as specialized training for personnel performing critical functions during a pandemic.

Table 5
Economic Commission for Africa
(Thousands of United States dollars)

	Estimated resource requirements	
	2008-2009	*In the event of a pandemic*
Maintaining business continuity	531.9	36.0
Operational continuity (on site and telecommuting)	531.3	25.4
Emergency communications	0.6	10.6
Medical interventions and prevention	5.1	—
Medical interventions (including stress counselling)	5.1	—
Preparatory activities	27.0	—
Awareness activities	27.0	—
Total	**564.0**	**36.0**

Economic and Social Commission for Asia and the Pacific

36. The Economic and Social Commission for Asia and the Pacific is participating in the pandemic preparedness plan of the United Nations country team in Thailand. The plan focuses on medical interventions and prevention, preparatory activities such as awareness campaigns and training, maintaining business continuity and the provision of support to the national response (see table 6).

37. Because Thailand is one of the countries that initiated an early response to the threat of a pandemic, many activities have already been undertaken and funded. In the latest review of the status of its emergency preparedness, ESCAP identified some additional areas for support.

38. In order to maintain business continuity, $233,700 would be required in the event of a pandemic for the administration of personnel contracts and security requirements for its personnel.

Table 6
Economic and Social Commission for Asia and the Pacific
(Thousands of United States dollars)

	Estimated resource requirements	
	2008-2009	*In the event of a pandemic*
Maintaining business continuity	—	233.7
Operational continuity (on site and telecommuting)	—	233.7
Medical interventions and prevention	—	—
Medical interventions (including stress counselling)	—	—
Preparatory activities	—	—
Total	**—**	**233.7**

Economic and Social Commission for Western Asia

39. The Economic and Social Commission for Western Asia has prepared a pandemic plan that focuses on business continuity, medical interventions and prevention and preparatory activities (see table 7).

40. Medical interventions and prevention activities would require $12,300 for the biennium 2008-2009. In the event of a pandemic, an additional $2,600 would be required. These activities are related to protecting the health of personnel and their dependants by procuring essential medications and by keeping stocks up to date.

41. Preparatory activities would require $3,000 for the biennium 2008-2009. This category comprises awareness activities for personnel and dependants.

Table 7
Economic and Social Commission for Western Asia
(Thousands of United States dollars)

	Estimated resource requirements	
	2008-2009	*In the event of a pandemic*
Maintaining business continuity	—	—
Medical interventions and prevention	12.3	2.6
Medical interventions (including stress counselling)	12.3	2.6
Preparatory activities	3.0	—
Awareness	3.0	—
Total	**15.3**	**2.6**

Economic Commission for Latin America and the Caribbean

42. The Economic Commission for Latin America and the Caribbean is participating in the pandemic plan of the United Nations country team in Santiago and will take advantage of many of the joint training, awareness campaigns and other activities organized under that plan. The Commission's own pandemic plan complements the country team plan and focuses its pandemic preparedness plan on business continuity, medical interventions and prevention activities (see table 8).

43. Activities needed to maintain business continuity would require $88,800 for the biennium 2008-2009. In the event of a pandemic, an additional $90,700 would be required. Those activities are related to improving emergency communications among critical personnel and ensuring that sufficient stocks and supplies are on hand in the event of local shortages.

44. Medical interventions and prevention activities would require $9,300 for the biennium 2008-2009. In the event of a pandemic, an additional $36,800 would be required. These activities are related to protecting the health of personnel and their dependants by maintaining stocks of essential medications and by ensuring access to stress counselling and other psychosocial support.

Table 8
Economic Commission for Latin America and the Caribbean
(Thousands of United States dollars)

	Estimated resource requirements	
	2008-2009	*In the event of a pandemic*
Maintaining business continuity	88.8	90.7
Operational continuity (on site and telecommuting)	88.8	74.5
Emergency sheltering	—	16.2
Medical interventions and prevention	9.3	36.8
Medical interventions (including stress counselling)	9.3	36.8
Preparatory activities	—	—
Total	**98.1**	**127.5**

IV. Revised estimates by section of the proposed programme budget for the biennium 2008-2009

45. The requirements proposed in the present report would result in revised estimates relating to the proposed programme budget for the biennium 2008-2009 as shown in tables 9 and 10.

Table 9
Requirements by budget section for the biennium 2008-2009
(Thousands of United States dollars)

		2008-2009					
			Growth				
		2006-2007 revised appropriation	*Proposed programme budget*[a]	*Present report*	*Total before recosting*	*Recosting*	*2008-2009 estimate*	*Additional requirements in the event of a pandemic*
17.	Economic and social development in Africa	107 404.2	1 806.3	564.0	109 774.5	10 358.3	120 132.8	36.0
18.	Economic and social development in Asia and the Pacific	74 664.8	696.2	—	75 361.0	5 832.9	81 193.9	233.7
20.	Economic and social development in Latin America and the Caribbean	97 180.1	289.3	98.1	97 567.5	6 043.7	103 611.2	127.5
21.	Economic and social development in Western Asia	56 324.6	485.3	15.3	56 825.2	2 950.1	59 775.3	2.6
27.	Public information	178 851.8	497.2	138.0	179 487.0	10 561.1	190 048.1	130.1
28C.	Office of Human Resources Management	67 557.4	4 434.8	912.9	72 905.1	4 696.7	77 601.8	6 295.1
28D.	Office of Central Support	245 408.8	2 061.7	4 900.7	252 371.2	17 459.1	269 830.3	1 807.6

	2006-2007 revised appropriation	2008-2009 Growth: Proposed programme budget[a]	2008-2009 Growth: Present report	2008-2009 Growth: Total before recosting	2008-2009 Growth: Recosting	2008-2009 estimate	Additional requirements in the event of a pandemic
Services							
28E. Administration, Geneva	107 192.8	186.1	172.2	107 551.1	3 483.6	111 034.7	422.2
28F. Administration, Vienna	35 297.4	(181.3)	166.3	35 282.4	1 443.9	36 726.3	380.0
28G. Administration, Nairobi	19 645.2	4 296.1	901.1	24 842.4	3 274.4	28 116.8	541.4
Total	**989 527.1**	**14 571.7**	**7 868.6**	**1 011 967.4**	**66 103.8**	**1 078 071.2**	**9 976.2**

[a] Growth in the proposed programme budget does not relate to avian influenza pandemic preparedness.

Table 10

Requirements by object of expenditure for the biennium 2008-2009[a]

(Thousands of United States dollars)

	2006-2007 revised appropriation	Growth: Proposed programme budget[b]	Growth: Present report	Total before recosting	Recosting	2008-2009 estimate	Additional requirements in the event of a pandemic
Posts	638 191.8	10 252.3	—	648 444.1	40 324.3	688 768.4	—
Other staff costs	19 000.2	1 175.6	3 148.6	23 324.4	1 717.5	28 190.5	6 525.6
Consultants and experts	6 868.3	(360.2)	3.0	6 511.1	693.2	7 207.3	—
Travel of representatives	715.5	40.7	—	756.2	49.2	805.4	—
Travel of staff	7 821.3	358.7	40.0	8 220.0	534.3	8 794.3	—
Contractual services	75 243.4	7 288.8	1 960.3	84 492.5	5 917.6	92 370.4	390.9
General operating expenses	184 956.0	4 103.7	1 888.6	190 948.3	13 720.6	206 557.5	1 358.3
Hospitality	278.1	(14.0)	—	264.1	20.1	284.2	—
Supplies and materials	14 481.7	(935.8)	693.3	14 239.2	1 123.2	16 055.7	1 510.1
Furniture and equipment	23 861.0	(5 760.1)	134.8	18 235.7	1 429.2	19 799.7	191.3
Grants and contributions	18 109.8	(1 578.0)	—	16 531.8	574.6	17 106.4	—
Total	**989 527.1**	**14 571.7**	**7 868.6**	**1 011 967.4**	**66 103.8**	**1 078 071.2**	**9 976.2**

[a] Requirements relate to sections 17, 18, 20, 21, 27, 28C, 28D, 28E, 28F and 28G of the proposed programme budget for 2008-2009.

[b] Growth in the proposed programme budget does not relate to avian influenza pandemic preparedness.

V. Conclusions and recommendations

46. The overall resource requirements under the regular budget arising from the implementation of the proposals contained in the present report are estimated at $7,868,600.

47. **The General Assembly is requested to:**

(a) Approve the estimated amount of $7,868,600 requested for the biennium 2008-2009, comprising $564,000 under section 17, Economic and social development in Africa; $98,100 under section 20, Economic and social development in Latin America and the Caribbean; $15,300 under section 21, Economic and social development in Western Asia; $138,000 under section 27, Public information; $912,900 under section 28C, Office of Human Resources Management; $4,900,700 under section 28D, Office of Central Support Services; $172,200 under section 28E, Administration, Geneva; $166,300 under section 28F, Administration, Vienna; and $901,100 under section 28G, Administration, Nairobi; this provision would represent a charge against the contingency fund and, as such, would need to be considered in the context of the consolidated statement of potential charges to the contingency fund to be presented towards the end of the main part of the sixty-second session of the General Assembly;

(b) Note that in the event of a pandemic, the preliminary indicative level of $9,976,200 would be required in addition to the resources requested in the present report.

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Item 82 of the provisional agenda*
Criminal accountability of United Nations officials and experts on mission

Criminal accountability of United Nations officials and experts on mission

Note by the Secretariat

Summary

The report of the Group of Legal Experts on ensuring the accountability of United Nations officials and experts on mission with respect to criminal acts committed in peacekeeping operations (see A/60/980), made a number of recommendations designed to overcome obstacles that exist in holding such personnel accountable for crimes committed during peacekeeping operations.

Of primary concern was the fact that if a crime is committed in a host State and that State is unable to prosecute an alleged offender or hold an offender accountable, there is a need to rely on other States to do so. If other States have not extended the operation of their criminal laws to apply to crimes committed in a host State — then there is a jurisdictional gap and the alleged offender is likely to escape prosecution. In order to close the jurisdictional gap, it is important that as many Member States as possible are able to assert and exercise criminal jurisdiction.

To provide a sound legal basis for the exercise of jurisdiction by States other than the host State, the Group of Legal Experts recommended the development of a new international convention to address jurisdiction and related issues. The Secretariat fully supports this recommendation. A convention would enable Member States to establish jurisdiction in as wide circumstances as possible, provide certainty in relation to the personnel who are subject to the exercise of such jurisdiction (the *ratione personae*) and provide certainty in relation to the crimes that are committed by those personnel over whom jurisdiction may be exercised (the *ratione materiae*).

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The Secretariat supports a convention that requires Member States to exercise jurisdiction when the alleged offender is a national of that State or the alleged offender is in that State and the State does not extradite him or her. The Secretariat also supports a convention that requires Member States to consider establishing jurisdiction when the victim of the crime is a national or a stateless person who has his or her habitual residence in the territory of that State or the crime is committed by a stateless person who has his or her habitual residence in the territory of that State.

The Secretariat supports the adoption of a convention that covers crimes committed by all United Nations personnel (excluding military members of national contingents who are subject to the exclusive jurisdiction of the sending State) who are in the area of a United Nations operation irrespective of the department, office, programme, fund or specialized agency with which they are engaged.

The Secretariat also supports a convention that applies to all crimes and is not limited to crimes against the person or to crimes involving sexual exploitation and abuse. The convention should not, however, attempt to list such crimes but should use a generic approach such as defining crimes by reference to a level of punishment in the country that is in a position to assert jurisdiction.

The Secretariat notes that only Member States have the legal capacity to conduct criminal investigations and to prosecute alleged offenders. Therefore, the Secretariat supports a number of short-term measures aimed at emphasizing the role of Member States in relation to the exercise of criminal jurisdiction. These are:

(a) A General Assembly resolution strongly urging Member States to establish, as a minimum, jurisdiction over their nationals who commit serious crimes as they are known and defined in their existing domestic criminal laws, where that conduct also constitutes a crime under the laws of the host State;

(b) The Security Council including language in mission-specific resolutions encouraging countries contributing or seconding personnel to take appropriate preventative action, including the conduct of predeployment training, and to be in a position to hold persons who commit crimes accountable for that criminal conduct;

(c) The General Assembly, through the Special Committee on Peacekeeping Operations, requesting the Secretary-General to continue including similar language in the memorandum of understanding that is developed between the United Nations and a Member State contributing a formed police unit and that the relevant Member State agree to this inclusion;

(d) The Department of Peacekeeping Operations ensure that notes verbales sent to permanent missions seeking personnel such as military observers, individual contributions to the police component of a United Nations operation and seconded corrections officers, make Member States aware of the expectation of the Secretariat that any person who serves as part of a United Nations operation is to have received predeployment training in relation to the zero tolerance policy and is aware that certain conduct may amount to a crime for which they will be held accountable.

Explanatory notes

"United Nations officials" includes United Nations staff and United Nations Volunteers (who are assimilated to staff under the status-of-forces agreements).

The term "experts on mission" includes United Nations military observers, police and civilians and others who are afforded the status of an expert on mission. These categories may include, inter alia, military observers, military liaison officers, military advisers, arms monitors, members of formed police units, seconded individual United Nations police and seconded corrections officers.

Although the report of the Group of Legal Experts (A/60/980) discussed accountability only in relation to United Nations officials and experts on mission, this stemmed from the limits placed on the Group by its terms of reference. The title for the present note derives from the agenda item title before the Sixth Committee. However, for purposes of the present note, the Secretariat is of the view that the report's recommendations should apply to all personnel in United Nations operations (including contractors and consultants) other than military members of national contingents. As Member States should already be in a position to exercise jurisdiction over military members of national contingents, the present note does not address such personnel.

Although the report of the Group of Legal Experts (A/60/980) discussed accountability in terms of peacekeeping operations, this stemmed from the limits placed on the Group by its terms of reference. For the purposes of the present note, the Secretariat does not limit accountability to persons participating in a peacekeeping operation. It is of the view that persons who participate in a United Nations operation should be held accountable. See, for example, part of the definition of "United Nations operations" in Article 1 of the 1994 Convention on the Safety of United Nations and Associated Personnel. A "United Nations operation" is defined by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control — where the operation is for the purpose of maintaining or restoring international peace and security.

The present note does not affect the operation of privileges and immunities and the role of the competent authority of the United Nations in determining whether the conduct was within the functions or mission of the alleged offender or in determining whether to waive any immunity under the relevant status-of-forces agreement, status of mission agreement, the 1946 Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946, and the 1947 Convention on the Privileges and Immunities of the Specialized Agencies approved by the General Assembly of the United Nations on 21 November 1947.

Concerning the exclusion of military members of national contingents who are subject to the exclusive jurisdiction of the sending State, see article 47 (b) of the model status-of-forces agreement (A/45/594). The Model stemmed from a 1989 request by the General Assembly (resolution 44/49 of 8 December 1989) for the preparation of a model status-of-forces agreement between the United Nations and the host country. It was implicitly endorsed by the General Assembly in its resolution 52/12 B of 19 December 1997.

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I. Background

1. By resolution 59/300, the General Assembly endorsed the recommendations set out in the report of the Special Committee on Peacekeeping Operations (A/59/19/Rev.1, part two, chap. II, para. 40 (a)). In accordance with that endorsement, the Secretary-General appointed a Group of Legal Experts to examine ways of ensuring that United Nations officials and experts on mission would never be effectively exempt from the consequences of criminal acts committed at their duty station, nor unjustly penalized, in accordance with due process.

2. The report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations (A/60/980) was transmitted to the General Assembly in August 2006 and presented to the Chairman of the Special Committee on Peacekeeping Operations for that Committee's consideration. The Special Committee recommended that the report be presented to the Chairman of the Fourth Committee for transmission to the Sixth Committee (A/60/19, para. 79).

3. By resolution 61/29, the General Assembly decided to establish an Ad Hoc Committee, open to all Member States of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, for the purpose of considering the report of the Group of Legal Experts, in particular its legal aspects.

4. In accordance with that resolution, the Ad Hoc Committee met at Headquarters from 9 to 13 April 2007.[1]

5. During the work of the Ad Hoc Committee, a number of issues were raised, including the following:

(a) The extent of the problem of criminal activity and short-term measures that could be taken to address criminal accountability;

(b) If a convention was developed — the Secretariat's position in relation to the scope *ratione personae* and *ratione materiae*, and the bases for the exercise of jurisdiction;

(c) Investigations and capacity-building;

(d) Cooperation among Member States and between Member States and the United Nations;

(e) The feasibility and legal implications of expanding the scope of the convention to cover officials of specialized agencies;

(f) The rationale for the distinction between military observers and military members of national contingents.

6. The present note seeks to address these issues.

[1] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 54* (A/62/54).

II. Introduction

7. Any crime committed by persons participating in a United Nations operation is unacceptable.[2] The Secretariat does not and cannot condone criminal conduct.

8. The Ad Hoc Committee requested the Secretariat to provide information on the extent of the problem of criminal activity. While not all cases of misconduct constitute criminal activity, statistics in this area suggest that the problem is significant.[3] In the 12-month period from January to December 2006, a total of 439 allegations of misconduct other than sexual exploitation and abuse[4] were reported[5] in missions led by the Department of Peacekeeping Operations.[6]

9. Such statistics are also available in relation to sexual exploitation and abuse.[7] In the 12-month period from January to December 2006, for those missions led by the Department of Peacekeeping Operations, 357 allegations of sexual exploitation and abuse were reported to the Office of Internal Oversight Services (OIOS). Of

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[2] The report of the Group of Legal Experts (A/60/980) was developed pursuant to General Assembly resolution 59/300, which recommended the establishment of a Group of Experts to advise on the means to ensure the accountability of United Nations staff and experts on mission in respect of criminal acts committed by them while serving in peacekeeping missions. The recommendations were made following the consideration of the report of the Special Committee on Peacekeeping Operations (A/59/19/Rev.1), which drew upon proposals made in a report by Prince Zeid Ra'ad Zeid Al-Hussein, the adviser to the Secretary-General on sexual exploitation and abuse by United Nations peacekeeping personnel ("the Zeid report") (A/59/710). Therefore, the focus of the Group of Legal Experts was on sexual exploitation and abuse that amounts to criminal conduct. However, as the Group noted (A/60/980, para. 8), its recommendations were not limited to such crimes but are applicable to all criminal conduct.

[3] The Office of Internal Oversight Services (OIOS) and the Department of Field Support, with the Department of Peacekeeping Operations, have put into place mechanisms to collect statistics. Similar systems have not been put into place consistently across the United Nations system.

[4] Among allegations included in this statistic are fraud, theft, assault, sexual harassment, breaches of United Nations rules and regulations, and traffic-related misconduct (including road traffic accidents such as driving while intoxicated or those accidents resulting in serious injury or death). While not all cases of misconduct will amount to criminal conduct, a number of cases did involve allegations of criminal conduct. In the past, allegations have also included crimes committed by personnel such as torture and murder.

[5] As each entity maintains its own statistics on misconduct, there is no central repository of all misconduct allegations (referred to under the report of OIOS on strengthening the investigation function of the United Nations (A/58/708) as "Category I" and "Category II"). However, OIOS maintains statistics relating to serious misconduct it receives from entities throughout the United Nations system. Similarly, the report of the Secretary-General on special measures for protection from sexual exploitation and sexual abuse (A/61/957) notes all statistics relating to sexual exploitation and abuse, representing one form of serious misconduct, from entities throughout the United Nations system, United Nations staff members, as well as individuals outside the United Nations.

[6] For purposes of the present note, the category of missions led by the Department of Peacekeeping Operations includes both special political missions led by the Department and peacekeeping missions.

[7] Among allegations included in this statistic are those defined as sexual exploitation and abuse in the Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13). While not all cases of sexual exploitation and abuse will amount to criminal conduct, a number of cases did involve allegations of criminal conduct, depending upon the jurisdiction, such as sexual intercourse with a minor, rape, prostitution and sexual assault.

these, 176 came from the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC).[8]

10. Additionally, there were 14 allegations of sexual exploitation and abuse in United Nations entities other than in missions led by the Department of Peacekeeping Operations.[9] Of those, five were substantiated, five were unsubstantiated, and investigations are ongoing in three cases (one individual against whom an allegation was lodged left the United Nations before the investigation was completed).

11. But statistics do not tell the whole story — they do not reflect the psychological and physical damage that criminal conduct causes the victim, the victim's family and/or the community. Statistics do not illustrate the damage that criminal activity of all kind causes the reputation of every peacekeeper and the United Nations Organization as a whole. Statistics do not show how criminal conduct impacts on the fulfilment of the mandate and the success of a United Nations operation, as well as the threat to the physical security of United Nations personnel.

12. Whenever crimes are committed by persons participating in a United Nations operation, there will be an impact on the trust that the United Nations seeks from the local community. This breach of trust makes the work of the United Nations difficult to accomplish. Without the trust of the community, mandates will not receive full cooperation and may fail or take longer to achieve.

13. In a post-conflict environment, criminal conduct by persons participating in a United Nations operation contributes to the very problem the United Nations is there to address: to rebuild a community devastated by conflict and to uphold the rule of law.

A. The United Nations Secretariat can only go so far

14. The Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13) sets out standards that demonstrate the United Nations zero tolerance policy in relation to such conduct. This zero tolerance policy is widely disseminated and is part of the standard of behaviour required of officials, experts on mission, consultants, military members of national contingents and United Nations Volunteers (see A/60/19, para. 65 and A/61/645, para. 40).

15. Education, predeployment and in-mission training campaigns further stress the zero tolerance policy. This is backed up by the establishment of Conduct and Discipline Units in Headquarters and United Nations operations to receive and coordinate complaints. The zero tolerance policy is further supported by regular patrolling of the mission area, the creation of out-of-bounds areas and the implementation of the United Nations and national discipline regimes.

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[8] MONUC is the largest peacekeeping operation in terms of authorized personnel strength.

[9] See A/61/957, annex III; the reason for the number of allegations may be attributable to underreporting owing to the fact that some United Nations entities have not established accessible complaint mechanisms or mechanisms to collect statistics, as noted in footnote 3 above.

16. But the Secretariat cannot hold a person criminally accountable. The Secretariat cannot conduct a criminal investigation[10] where it is alleged that the conduct engaged in by the persons participating in a United Nations operation may amount to a crime. Nor can the Secretariat prosecute an alleged offender. In the absence of an executive mandate where the United Nations is mandated to have law enforcement and prosecutorial powers, such as in Kosovo (Serbia) (see Security Council resolution 1244 (1999)) and Timor-Leste (see Security Council resolution 1704 (2006)), the exercise of criminal jurisdiction remains the responsibility of Member States.

B. Jurisdictional gap

17. If a crime is committed in a host State and that host State is unable to prosecute an alleged offender or make an offender accountable, there is a need to rely on other States to do so. If other States have not extended the operation of their criminal laws to apply to crimes committed in a host State, then there is a jurisdictional gap and the alleged offender is likely to escape prosecution.

18. The Secretariat cannot fill this jurisdictional gap. While the Secretariat has implemented measures to prevent crimes being committed, a comprehensive response to criminal conduct requires criminal accountability. Criminal accountability in such specific instances will only eventuate if the jurisdictional gap is filled by Member States.

19. Member States need to act to ensure that all United Nations personnel[11] are never effectively exempt from the consequences of criminal acts committed at their duty station, nor unjustly penalized, in accordance with due process.

III. Short-term measures: addressing the jurisdictional gap

20. Establishing, asserting and exercising criminal jurisdiction over crimes committed within the borders of another State is not new, nor is it a simple process. But that is not to say that there cannot be short-term measures to encourage Member States to address the jurisdictional gap.

21. The General Assembly could adopt a resolution strongly urging Member States to establish, as a minimum, jurisdiction over their nationals who commit serious crimes as they are known and defined in their existing domestic criminal laws, where that conduct also constitutes a crime under the laws of the host State.

22. The resolution could include a request encouraging Member States and the Secretariat to cooperate in the sharing of information, the gathering of evidence and ensuring the availability of witnesses. Such cooperation could assist facilitating the exercise of jurisdiction by the State of nationality.

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[10] For a discussion on administrative investigations conducted by the Secretariat, see paras. 50-53 below.

[11] For a discussion of the Secretariat's view that its recommendations should apply to all personnel in United Nations operations (including contractors and consultants) other than military members of national contingents, see explanatory notes and paras. 34-36 below.

23. This is a short-term measure, aimed at bringing to the attention of Member States their responsibility to hold their nationals accountable for the crimes they commit.

24. There are other short-term measures to emphasize the role of Member States in filling the jurisdictional gap, such as:

(a) The Security Council could include language in the mission-specific resolutions, encouraging countries contributing or seconding personnel to take appropriate preventative action, including the conduct of predeployment training, and to be in a position to hold such persons who commit crimes accountable for that criminal conduct;[12]

(b) The General Assembly, through the Special Committee on Peacekeeping Operations, could request the Secretary-General to continue to include similar language in the memorandum of understanding that is developed between the United Nations and a Member State contributing a formed police unit, and that the relevant Member State agree to this inclusion.

25. In addition, the Department of Peacekeeping Operations could ensure that notes verbales sent to permanent missions seeking personnel, such as military observers, individual police personnel or individual corrections officers make Member States aware of the expectation of the Secretariat that any person who serves as part of a United Nations operation is to have received predeployment training in relation to the zero tolerance policy and is aware that certain conduct may amount to a crime for which they will be held accountable. The notes verbales could also include a statement indicating the Secretariat's expectation that Member States are in a position to take appropriate action against the requested personnel who engage in criminal activity.

IV. Longer term: a convention

26. While implementation of short-term measures will continue to emphasize the role of Member States in filling the jurisdictional gap, it does not resolve all issues. In the longer term, the Secretariat fully supports the development of a convention that would:

(a) Enable Member States to establish jurisdiction in as wide circumstances as possible;

(b) Provide certainty in relation to the personnel who are subject to the exercise of such jurisdiction (the *ratione personae*);

(c) Provide certainty in relation to the crimes that are committed by those personnel over which jurisdiction may be exercised (the *ratione materiae*).

These issues are discussed below.

27. In addition, a convention could facilitate international cooperation (particularly in relation to extradition) and cooperation between Member States and

[12] This measure complements recent Security Council practice of including a similar provision for troop-contributing countries — see Security Council resolution 1745 (2007), para. 13; resolution 1756 (2007), para. 22; and resolution 1758 (2007), para. 9.

the Secretariat (particularly in relation to the use of material provided by the Secretariat to the Member States).[13] It could address gaps that exist in matters concerning the conduct of criminal investigations, including securing the integrity of evidence to facilitate any potential prosecution.

A. Bases for jurisdiction

28. In order to close the jurisdictional gap, it is important that there be a number of jurisdictional bases upon which Member States could assert jurisdiction.

29. As the proposed short-term measures indicate, the Secretariat is of the view that Member States should establish jurisdiction over crimes committed by their nationals. (This is in addition to the establishment of jurisdiction by the State in which the crime occurred as the existence of such jurisdiction is not disputed (see A/60/980, para. 59)).

30. However, while many Member States may not need an international convention to assert and exercise criminal jurisdiction over their nationals, other Member States may need such an instrument. It is the Secretariat's view that a convention would facilitate Member States being able to assert and exercise jurisdiction in as wide circumstances as possible under international law.

31. In addition to establishing jurisdiction over its nationals, and consistent with concluded instruments, including the 1994 Convention on the Safety of United Nations and Associated Personnel,[14] the Secretariat is of the view that a convention should include the need for Member States to consider establishing jurisdiction when either:

(a) The victim is a national or a stateless person who has his or her habitual residence in the territory of that State;

(b) Or the crime is committed by a stateless person who has his or her habitual residence in the territory of that State.

32. The Secretariat also fully supports a convention requiring Member States to establish jurisdiction on an "extradite or prosecute" basis for crimes committed by persons participating in United Nations operations.[15] Crimes committed by persons participating in United Nations operations should not be viewed as merely domestic crimes. The fact that alleged offenders are individuals who have been placed in a position of trust in the host State to serve the international community, as well as the impact that crimes have on the image and credibility of the international mandate, warrants the establishment of jurisdiction on an extradite or prosecute basis.

33. In this regard, the Secretariat notes that the Convention on the Safety of United Nations and Associated Personnel includes the establishment of jurisdiction on the grounds of extradite or prosecute. It is arguable that similar considerations could apply to the establishment of jurisdiction over crimes committed by persons participating in United Nations operations as well as crimes committed against them.

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[13] For a discussion on investigations conducted by the Secretariat, see paras. 50-53 below.

[14] United Nations, *Treaty Series*, vol. 2051, No. 35457, art. 10.

[15] For a discussion on scope *rationae personae*, see paras. 34-36 below.

B. Scope *ratione personae*

34. The Secretariat is of the view that there is no major policy impediment as to why a convention could not apply to cover all persons participating in the United Nations operations, irrespective of the department, office, programme or fund with whom they are engaged.[16] While the report of the Group of Legal Experts (A/60/980) limited the proposed coverage of the convention to officials and experts on mission in peacekeeping operations, this stemmed from the limits placed on the Group of Legal Experts by its terms of reference.

35. The same applies in relation to officials of specialized agencies. Again the Secretariat is of the view that the issue is not the nature of the department or agency with which the alleged offender is associated. The essential consideration is the location in which the alleged offender is operating. If the alleged offender is operating in a conflict or post-conflict environment where the criminal justice system may be impaired, the same rationale exists for closing any jurisdictional gap in relation to these personnel as applies to members of the United Nations operation.

36. In relation to persons participating in United Nations operations under Chapter VII of the Charter, while the draft convention proposed by the Group of Legal Experts excluded such persons from the coverage of the convention, the Secretariat is of the view that there is no reason to distinguish such missions from Chapter VI missions. The rationale for excluding such personnel from the Convention on the Safety of United Nations and Associated Personnel[17] does not apply to a convention or resolution dealing with crimes committed by such personnel.

C. Scope *ratione materiae*

37. The Secretariat recognizes the difficulty in establishing a finite list of crimes that should be covered by a convention. What seems clear is that a convention should not be limited to crimes against the person; the recent investigation into gold smuggling and trafficking in weapons in MONUC highlights the need for a convention to apply to all serious crimes to ensure there is no jurisdictional gap.

38. The Secretariat recognizes that all Member States have enacted criminal laws to address conduct that is criminal as recognized by the particular State.

39. The Secretariat is of the view that the convention should not attempt to list the crimes to be covered, nor specify how crimes should be defined. Instead, the convention should cover crimes, as they are known and defined under the national law of the State asserting jurisdiction and that are punishable under that nation's law by at least two/three years' imprisonment.

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[16] For a discussion of the Secretariat's view that the recommendations should apply to all personnel in United Nations operations (including contractors and consultants) other than military members of national contingents, and the definition of "United Nations operation" and a discussion of the Secretariat's view that persons who participate in a United Nations operation should be held accountable, see explanatory notes.

[17] United Nations, *Treaty Series*, vol. 2051, No. 35457, art. 2 (2).

40. A precedent for describing crimes to be covered by a convention in this manner is found in the United Nations Model Treaty on Extradition.[18] Article 2 of that Model Treaty provides as follows:

Extraditable offences

1. For the purposes of the present Treaty, extraditable offences are offences that are punishable under the laws of both Parties by imprisonment or other deprivation of liberty for a maximum period of at least one/two year(s), or by a more severe penalty. Where the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, extradition shall be granted only if a period of at least four/six months of such sentence remains to be served.

41. Any uncertainty about the crimes that have been given extraterritorial effect by a signatory to such a convention could be addressed by the convention, including a provision that requires Member States to notify the Secretary-General of such crimes.

D. Investigations

42. Criminal accountability will only ever eventuate if there has been a thorough and professional investigation that produces credible and reliable information that is admissible as evidence in the courts of the Member State exercising jurisdiction in relation to the alleged offender.

43. Where the police component of a United Nations operation has an executive mandate to exercise police powers (as in Kosovo (Serbia) and Timor-Leste), any criminal investigation may be conducted by the United Nations Police, either alone, or in conjunction with the host States' law enforcement authorities.

44. However, the Secretariat, whether it is the Department of Peacekeeping Operations, the Department of Field Support or OIOS or any other organizational element, does not have the legal capacity to conduct criminal investigations. In the absence of an executive mandate for the United Nations operation, it is only a Member State (whether it be the host State or another State) that has capacity to conduct a criminal investigation in accordance with its domestic laws and existing international cooperative arrangements.

45. As the Group of Legal Experts noted in its report, there are a number of advantages to the host States' law enforcement authorities conducting an investigation into alleged criminal activities (see A/60/980, para. 27). That is the place where the alleged crime occurred, and it is where the witnesses and evidence are located. The capacity-building role of the United Nations Police, where it exists, could facilitate this outcome.

[18] See General Assembly resolution 45/116, annex. See also the United Nations International Drug Control Programme (now United Nations Office on Drugs and Crime) model bills dealing with witness protection, available from www.unodc.org/pdf/lap_witness-protection_2000.pdf and mutual assistance in criminal matters, available from www.unodc.org/pdf/lap_mutual-assistance_2000.pdf.

46. Many mandates for the police component of a United Nations operation focus on building capacity of the host State's police and law enforcement authorities. This involves training, coaching, mentoring and advising the local police and law enforcement authorities, rather than just observing. The enhanced focus on capacity-building may facilitate a credible and reliable investigation that is conducted in accordance with the law of the host State and international criminal justice and human rights norms and standards. This in turn could facilitate the exercise of jurisdiction by Member States as there would be a police investigation into the alleged criminal activity.

47. It is emphasized that with the exception of United Nations operations with an executive mandate, a criminal investigation remains the responsibility of the Member States and not the Secretariat or United Nations Police.

48. The Department of Peacekeeping Operations has identified a number of police and law enforcement projects for 2007 that are directly related to building institutional police capacity in post-conflict environments. This work is ongoing and has been developed independently of the recommendations contained in the report of the Group of Legal Experts (A/60/980). The capacity-building recommendations in that report do not raise any new funding issues.

49. It may be, as the report points out, that even with assistance from or oversight of the United Nations, the host State is unable to conduct a police investigation (A/60/980, para. 40). Alternatively, the mandate for the United Nations operation may not include a role for building capacity of the host country's law enforcement authorities. In either case, the only investigation that is conducted into the alleged criminal activity will be that conducted by the Secretariat.

50. As has been noted, the Secretariat does not have the legal capacity to conduct a criminal investigation.[19] This does not mean that an investigation conducted by the Secretariat cannot produce a credible and reliable report that contains information in a verifiable form that is of sufficient weight to trigger a criminal investigation by the law enforcement authorities of a State that has jurisdiction to prosecute the matter. In its report, the Group of Legal Experts made a number of recommendations in this regard (A/60/980, para. 84) that are being considered by the Secretariat.

51. In addition, the report of the Office of Internal Oversight Services on proposals for strengthening OIOS sets out a number of recommendations that would strengthen and focus the role of OIOS in relation to investigations conducted by that Office (see A/60/901, paras. 79-97). Implementation of those measures are designed to enhance the capacity of the Secretariat to generate a report into allegations of criminal conduct that is of enough veracity to form the basis for the commencement of a criminal investigation by the relevant authorities of a prosecuting State.

52. Measures to enhance the capacity of OIOS are ongoing. The recommendations in the report of the Group of Legal Experts to enhance the capacity of OIOS do not raise any new or separate funding issues.

[19] Executive authority rests with Governments. In this context, executive authority is the ability to exercise law enforcement functions, including arrest, search and seizure and conducting interviews in accordance with the authority vested by the Government.

53. In situations in which the State of nationality would be amenable to exercising jurisdiction, questions of mutual assistance in criminal matters arise. While bilateral and other schemes exist to facilitate cooperation between States, it is not inconceivable that a convention on criminal accountability of persons participating in United Nations operations would raise its own peculiarities, especially with regard to securing the integrity of the evidence. These would be matters that may require conventional rules to fill the investigation gap.

V. Rationale for the distinction between military observers[20] and military members of national contingents

54. One of the principle reasons for the distinction between military observers and military members of national contingents is the relationship between such persons and the United Nations.

55. Military observers are military officers assigned by the United Nations to perform missions or tasks for the United Nations. They are nominated by their Governments following a request by the Secretary-General and serve the United Nations in a personal capacity and not as representatives of their State.

56. Military members of national contingents, on the other hand, are provided by a sending State as representatives of that State. There is no individual arrangement between members of a national contingent and the United Nations; rather their conditions are covered by a memorandum of understanding between the United Nations and the troop-contributing country. Unlike military observers, military members of national contingents are provided as part of a contingent and are not selected on an individual or personal basis.

57. The relationship between the United Nations and military observers, and the role they perform resulted in military observers being classified as "experts on mission" (within the meaning of article VI of the 1946 Convention on the Privileges and Immunities of the United Nations)[21] in the model status-of-forces agreement between the United Nations and the host country (see A/45/594, annex, para. 26).

58. The General Convention does not, however, include a definition of experts on mission. This issue was considered by the International Court of Justice in its advisory opinion of 15 December 1989 on the *Applicability of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations*[22] on the extent of the immunities afforded to experts on mission.

59. The International Court of Justice observed that:

> "[Section 22] does not, however, furnish any indication of the nature, duration or place of these missions. Nor do the *travaux préparatoires* provide any more guidance in this respect."

[20] While the following discussion refers to military observers, it applies equally to all military personnel who are afforded the status of an expert on mission.

[21] United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1); hereinafter called the General Convention.

[22] *I.C.J. Reports*, 1989, p. 177.

60. In conclusion, the Court took the view that "the General Convention is applicable to persons (other than United Nations officials)[23] to whom a mission has been entrusted by the Organization and who are therefore entitled to enjoy the privileges and immunities provided for in [section 22 of the General Convention] with a view to the independent exercise of their functions".

61. In accordance with this view, as military observers are persons "to whom a mission or task has been entrusted by the Organization", the Secretariat has taken the view that the legal status of military observers is correctly classified as experts on mission.[24]

62. As experts on mission, military observers are subject to different financial and accountability regimes as compared to their national contingent counterparts. Military observers are not entitled to carry weapons. In addition, they are specifically prohibited from seeking and accepting instructions with regard to the performance of duties from their Government or any other authority external to the United Nations Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission (ST/SGB/2002/9).

63. In relation to the exercise of jurisdiction of the host State over an expert on mission who is accused of committing a crime — there is a need to consider the coverage of the relevant status-of-forces agreement or status of mission agreement.[25] In accordance with paragraph 47 (b) of the model status-of-forces agreement, only "military members of the military component of the United Nations peacekeeping operation" are subject to the exclusive jurisdiction of their respective participating State in respect of any crimes committed in the host State. As military observers are provided on an individual basis, there is no concept of a participating State in relation to such persons (see paras. 54-61 above). This means that they do not fall within paragraph 47 (b) of the model status-of-forces agreement. Instead, military observers are covered by paragraph 47 (a) of the model status-of-forces agreement, which provides that the Representative/Commander shall conduct any necessary supplementary inquiry (to that of the host State) and then agree with the Government whether or not criminal proceedings will be instituted.

64. One result of this is that while military observers remain members of their national armed forces and subject to the military jurisdiction of their sending State, this jurisdiction is in addition to, and not to the exclusion of, the laws of the host State.

65. Any proposal to change the status of military observers will need a reconsideration of their role, their relationship with the United Nations and their legal status vis-à-vis the host State as set out in the status-of-forces and status of mission agreements.

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[23] Officials are covered by art. V of the General Convention.

[24] Miller, A. J., "Legal aspects of stopping sexual exploitation and abuse in U.N. peacekeeping operations", in *Cornell International Law Journal*, vol. 39, No. 71 (2006) states "even though the General Convention does not define experts on mission, it is clear that these individuals are U.N. agents but not U.N. officials".

[25] This consideration is in addition to considering the existence and operation of immunities.

VI. Conclusion

66. Crimes committed by persons participating in United Nations operations impact not only on the victim and/or the host country, but also on the international community and the execution of the mandate. A comprehensive response to this problem requires offenders to be held accountable for their criminal conduct.

67. The Secretariat can only go so far; it cannot conduct criminal investigations or criminal trials, which remain the responsibility of Member States.

68. Member States are encouraged to take steps to facilitate the exercise of criminal jurisdiction over their persons participating in United Nations operations. In the longer term, a convention is supported, not only to provide a basis for the exercise of jurisdiction and clarification of a number of issues, but also to indicate to the international community the importance of holding persons participating in United Nations operations accountable for any criminal conduct.

VII. Recommendations

A. Short-term measures: addressing the jurisdictional gap

69. The Secretariat supports the following short-term measures aimed at emphasizing the role of Member States in relation to the exercise of criminal jurisdiction:

(a) The adoption of a resolution in which the General Assembly strongly urges Member States to establish, as a minimum, jurisdiction over their nationals who commit serious crimes as they are known and defined in their existing domestic criminal laws, where that conduct also constitutes a crime under the laws of the host State;

(b) The inclusion of language in mission-specific Security Council resolutions that encourages countries contributing or seconding personnel to take appropriate preventative action, including the conduct of predeployment training, and to be in a position to hold persons who commit crimes accountable for that criminal conduct;

(c) A request by the General Assembly, through the Special Committee on Peacekeeping Operations, that the Secretary-General continue to include similar language in each memorandum of understanding that is developed between the United Nations and a Member State contributing a formed police unit, and that each relevant Member State agree to the inclusion of such language;

(d) Action by the Department of Peacekeeping Operations to ensure that notes verbales sent to permanent missions seeking personnel, such as military observers, individual contributions to the police component of a United Nations operation and seconded corrections officers, make Member States aware of the expectation of the Secretariat that any person who serves as part of a United Nations operation is to have received predeployment training in relation to the zero tolerance policy and is aware that certain conduct may amount to a crime for which they will be held accountable.

B. Long-term measures: a convention

70. The Secretariat supports the adoption of a convention that:

(a) Requires Member States to exercise jurisdiction when the alleged offender is a national of that State or the alleged offender is in that State and the State does not extradite him or her;

(b) Requires Member States to consider establishing jurisdiction when the victim of the crime is a national or a stateless person who has his or her habitual residence in the territory of that State or the crime is committed by a stateless person who has his or her habitual residence in the territory of that State;

(c) Covers crimes committed by all United Nations personnel (excluding military members of national contingents) who are in the area of a United Nations operation irrespective of the department, office, programme, fund or specialized agency with which they are engaged;

(d) Applies to all crimes and is not limited to crimes against the person or to crimes involving sexual exploitation and abuse;

(e) Facilitates international cooperation and cooperation between Member States and the Secretariat.